



**Ninety-Eighth Legislature - First Session - 2003**  
**Committee Statement**  
**LB 46**

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**Hearing Date:** February 13, 2003

**Committee On:** Judiciary

**Introducer(s):** (Brashear, Bourne, Dw. Pedersen)

**Title:** Change and adopt provisions relating to corrections, probation, and parole

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**Roll Call Vote – Final Committee Action:**

Advanced to General File

X Advanced to General File with Amendments

Indefinitely Postponed

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**Vote Results:**

7 Yes                      Senators Brashear, Chambers, Foley, Mines, Pedersen, Quandahl,  
Tyson

No

Present, not voting

1 Absent                      Senator Mossey

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**Proponents:**

Senator Kermit Brashear  
Robert Guy  
Sara Mogulescu  
Virgil Jacob  
Harold Clarke  
Ed Birkel  
Linda Krutz  
Marlys Sanders

Jeff Golden  
John Krejci  
Jerry Soucie

Jim Stark  
John Heida  
Bob Finney  
Pamela Huie

**Opponents:**

**Representing:**

Introducer  
Vera Institute of Justice  
Vera Institute of Justice  
Family & Friends of Inmates  
Department of Correctional Services  
Probation Administration  
State Parole Board  
Family & Friends of Inmates  
Restorative Justice Program, United Methodist  
Ministries  
Boys and Girls Home of Nebraska, Inc.  
National Association of Social Workers  
Nebraska State Bar Association  
Nebraska Commission on Public Advocacy  
i Secure Trac Corporation  
i Secure Trac Corporation  
Dakota County Attorney  
Family & Friends of Inmates

**Representing:**

**Neutral:**  
Joe Steele

**Representing:**  
Nebraska Supreme Court

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**Summary of purpose and/or changes:**

Legislative Bill 46 relates to criminal justice. Specifically, LB 46 provides or changes provisions dealing with Probation, Parole, a newly created Community Corrections Council, the Commission on Law Enforcement and Criminal Justice, and the Department of Correctional Services.

Probation

Probation programming fees, or supervision fees, are assessed to probationers as costs, unless an offender is indigent, and the Probation Program Cash Fund to use these fees for probation programming is created. All probationers would pay a one-time enrollment fee of \$30, traditional probationers would pay a monthly programming fee of \$25, intensive supervised probationers would pay a monthly programming fee of \$35.

Presentence investigations (PSIs) are prohibited with regard to convictions for a Class IIIA misdemeanor or lesser offense. Also, if the court approves a stipulation between the state and the offender that a PSI is not necessary, the court is not required to order one.

The Board of Parole and the Office of Parole Administration are given the authority to receive a copy of an offender's presentence investigation.

Conditions of probation are updated and harmonized to allow participation under the Community Corrections Act, to require a waiver of extradition if found in another jurisdiction, to clarify that a probationer convicted of a felony shall not possess a firearm, to require payment of restitution, and to require payment of all costs and fees.

Probation officers are given the option of imposing administrative sanctions when a probationer has committed a noncriminal violation or a substance abuse violation.

Counties are made responsible for the cost of transporting offenders to the incarceration work camp.

Parole

Parole programming fees, or supervision fees, are assessed to parolees as costs at \$25 per month beginning the second month of parole supervision. The fees may be waived if an undue hardship results or a parolee may perform community service in lieu of the fee. The Parole Program Cash Fund is created utilizing these fees for parole programming.

For an offender whose parole has been revoked due to a conviction for a felony committed while on parole, the Board of Parole is given discretion to consider repareole.

Out-of-state offenders are allowed to be discharged by the Board of Parole from any Nebraska parole term when the discharge date in Nebraska has been reached.

The parole eligibility requirement for drug offenders completing drug abuse treatment or counseling is eliminated as is the requirement to not violate drug or alcohol use rules while incarcerated to be parole eligible.

#### Community Corrections Council (newly created)

A Community Corrections Act (Act) creates a Community Corrections Council (Council). For administrative purposes, the Council is affiliated with the Crime Commission. The Council's responsibilities include developing and implementing statewide operation and use of enhanced community corrections facilities and programs in which offenders participate through Probation and Parole.

The Supreme Court is to promulgate, by court rule, sentencing guidelines for certain felony offenders, beginning with drug offenses, under the Act.

The current Community Correctional Facilities and Programs Act is repealed in its entirety.

#### Commission on Law Enforcement and Criminal Justice (Crime Commission)

The Crime Commission is to develop a process for uniform data collection and analysis of Nebraska crimes and offenders to assist the Council and the Supreme Court in completing their responsibilities under the Act. To expand the Crime Commission's existing data collecting functions and ability to develop and analyze data, the Community Corrections Uniform Data Analysis Fund is formed. A court fee of \$1.00 is imposed to support the fund.

#### Department of Correctional Services

The Correctional System Overcrowding Emergency Act is created. This Overcrowding Emergency Act requires the Governor to declare an emergency when DCS is over 140% of design capacity.

Upon an overcrowding emergency declaration, the Board of Parole will consider or reconsider paroling committed offenders eligible for parole. The Board of Parole will stop operating under the Overcrowding Emergency Act when the corrections system population is at operational capacity, or at 125% of design capacity.

#### **Explanation of amendments, if any:**

The committee amendment makes technical changes and harmonizes provisions of LB 46.

The language is removed regarding a stipulation between the state and the offender that a PSI for a felony sentencing is not necessary. PSIs shall be conducted for all felony sentencings.

The amendment provides that the intention of the Legislature is that committed offenders eligible for parole have the opportunity to complete their sentences on parole.

Continued participation in treatment programming shall be part of each offender's parolee personalized program plan.

The Board of Parole is required to conduct a parole review at least 60 days prior to an offender's parole eligibility date unless the offender is eligible for parole upon entering DCS. When eligible immediately upon entering DCS, the review is to occur as early as practical.

The amendment provides that failing to comply with DCS approved personalized program plan would not be a factor in determining parole eligibility.

In addition to the members specified in LB 46, members of the Council would also include the following additional nonvoting members under the amendment: 2 members of the Legislature, 2 district court judges, a mental health and substance abuse professional, and 3 providers of community based behavioral health services—one from each congressional district.

Instead of the Supreme Court developing sentencing guidelines, the amendment provides that the Council would develop and recommend the sentencing guidelines to the Supreme Court.

Finally, the committee amendment specifies that the Governor may declare an overcrowding emergency instead of requiring the Governor to do so under the Correctional System Overcrowding Emergency Act.

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**Senator Kermit A. Brashear, Chairperson**